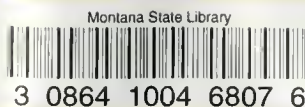


S
342.786
C1CP
NO.5 1972
1



STATE DOCUMENTS
FEB 18 1972

MONTANA CONSTITUTIONAL CONVENTION

1971-1972

JUDICIARY COMMITTEE PROPOSAL

No. V

Date Reported: February 17, 1972

David L. Holland Chairman

William R. ... Vice Chairman

MONTANA STATE LIBRARY
930 East Lyndale Avenue
Helena, Montana 59601

DATE DUE

MSW MAR 5	'75				

~~S/342.786/Clep5~~

~~Montana. Constitutional Convention,~~

~~Judiciary Committee. 1971-72.~~

~~Proposal. 1972.~~

No separate cards

STATE DOCUMENTS

MONTANA STATE LIBRARY
930 East Lyndale Avenue
Helena, Montana 59601

STANDING COMMITTEE REPORT

February 17, 1972

Mr. President:

We the committee on Judiciary respectfully report as follows:

The Judiciary Committee Majority Proposal is ready to be duplicated and submitted to the Committee of the Whole for consideration; and

The Judiciary Committee Minority Proposal is ready to be duplicated and submitted to the Committee of the Whole for consideration.

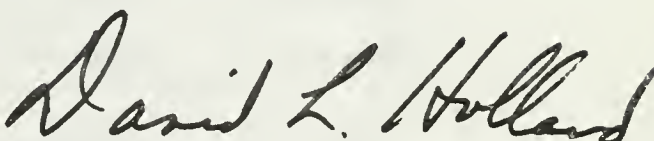

Chairman

TABLE OF CONTENTS

	<u>Page</u>
LETTER OF TRANSMITTAL.....	1
TEXT OF MAJORITY PROPOSAL	3
COMMENTS ON MAJORITY PROPOSAL.....	15
Section 1. Judicial Power.....	15
Section 2. Supreme Court - Appellate Jurisdiction.....	15
Section 3. Supreme Court - Appellate Jurisdiction - Writs	16
Section 4. Supreme Court - Terms.....	17
Section 5. Supreme Court - Composition - Disqualifications..	17
Section 6. Election and Term of Office of Supreme Court Justices.....	18
Section 7. Clerk of Supreme Court.....	18
Section 8. Justices of Supreme Court - Qualifications.....	19
Section 9. District Courts - Jurisdiction.....	20
Section 10. Judicial Districts.....	21
Section 11. Writs of Error and Appeal.....	22
Section 12. District Judges - Qualifications...	22
Section 13. District Courts - Business Days - Terms.....	24
Section 14. Clerks of District Courts.....	25
Section 15. County Attorneys.....	25
Section 16. Justices of the Peace - Election - Qualifications - Compensation - Jurisdiction.....	26

TABLE OF CONTENTS (Continued)

Section 17.	Appeals from Justice Courts.....	28
Section 18.	Police and Municipal Courts.....	28
Section 19.	Removal and Discipline of Judges.....	29
Section 20.	Courts of Record.....	31
Section 21.	Laws Relating to Courts - Uniform	31
Section 22.	Style of Process.....	32
Section 23.	Form of Action.....	32
Section 24.	Judicial Compensation.....	32
Section 25.	Prohibition of Outside Income....	33
Section 26.	Law Practice Prohibited.....	33
Section 27.	Supreme Court Opinions.....	34
Section 28.	Residence of Judicial Officers...	34
Section 29.	Vacancies; Non-succession of Appointee.....	35
Section 30.	Ineligibility for Public Office..	36
Section 31.	Judge Pro Tempore.....	36
Section 32.	Forfeiture of Judicial Office....	37
SEPARATE MAJORITY PROPOSAL ON CAMPAIGN EXPENSES.....		38
COMMENTS ON MAJORITY PROPOSAL ON CAMPAIGN EXPENSES..		39
TEXT OF MINORITY PROPOSAL.....		40
COMMENTS ON MINORITY PROPOSAL.....		46
Section 1.	Judicial Power.....	46
Section 2.	Supreme Court Powers.....	47
Section 3.	Supreme Court Organization.....	49

TABLE OF CONTENTS (Continued)

Section 4.	District Court Powers.....	50
Section 5.	Judicial Districts.....	53
Section 6.	Terms and Pay of Judges.....	54
Section 7.	Selection of Judges.....	54
Section 8.	Qualifications and Limitations of Judges.....	58
Section 9.	Disqualification of Judges.....	60
Section 10.	Removal and Discipline of Judges and Lawyers.....	61
Section 11.	Clerk of the Supreme Court.....	62
Section 12.	Clerk of the District Court.....	63
Section 13.	District Attorneys.....	64
UNANIMOUS PROPOSAL ON SEPARATE MATTER.....		65
COMMENTS ON UNANIMOUS PROPOSAL ON SEPARATE MATTER...		66
APPENDIX		
Cross reference of present and proposed Article		67
Delegate proposals considered by committee		69
Witnesses heard by committee		71
Roll Calls		75

Date: February 16, 1972

To: MONTANA CONSTITUTIONAL CONVENTION

From: Judiciary Committee

Ladies and Gentlemen:

The Committee on Judiciary hereby submits its recommendations contained in this report to the Montana Constitutional Convention.

The recommendations deal with the structure and organization of the supreme court, district courts and justice of peace courts.

The majority report, among other things, contains election of judges, tenure of judges and qualifications of judges. The report further contains recommendations for the elections of clerks of court and county attorneys.

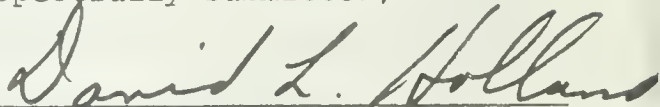
The minority of the committee has filed a minority report which contains recommendations for selection of judges on a basis different from the majority report. The minority report is in itself a complete judicial article and is entirely distinguishable from the majority report. Although the reports deal with similar subjects, they are entirely separate.

Recommendations contained in this report are of great concern to the people. Resolutions by the Convention will have profound effects upon the administration of justice and the nature and philosophy of our government. We regret

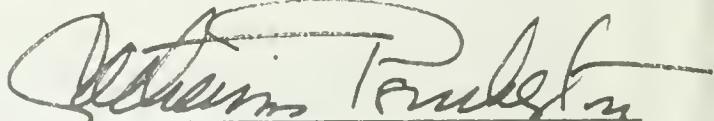
that complete consensus was not possible. We do report that all members of the committee worked diligently and the majority and minority reports are a consensus of the opinions of all persons signing them. While the members of the committee had philosophical differences, particularly about selection of judges, the entire committee, working on a difficult subject, wholeheartedly devoted their time and energy to their respective report.

The committee expresses their thanks to its Research Analyst, Sandra Muckelston, and to its Secretary, Ellen McCarthy, and to its administrative Interns, Dodge Leary and Katherine Sullivan.

Respectfully submitted,

A handwritten signature in cursive script, reading "David L. Holland".

DAVID L. HOLLAND, Chairman

A handwritten signature in cursive script, reading "Catherine Pemberton".

CATHERINE PEMBERTON, Vice-Chairman

MAJORITY PROPOSAL

1 BE IT PROPOSED BY THE JUDICIARY COMMITTEE:

2 That any proposed new constitution contain Article
3 VIII of the present constitution amended to read as
4 follows:

6 ARTICLE _____

7 THE JUDICIARY

8 Section 1. JUDICIAL POWER. The judicial power is
9 vested in a supreme court, district courts, justice of the
10 peace courts, and such other courts as the legislative
11 assembly may establish.

12 Section 2. SUPREME COURT - APPELLATE JURISDICTION.
13 The supreme court, except as otherwise provided in this
14 constitution, shall have appellate jurisdiction only,
15 which shall be co-extensive with the state.

16 Section 3. SUPREME COURT - APPELLATE JURISDICTION -
17 WRITS. The appellate jurisdiction of the supreme court
18 shall extend to all cases at law and in equity, subject,
19 however, to such limitations and regulations as may be
20 prescribed by law. Said court shall have power in its
21 discretion to issue and to hear and determine writs of
22 habeas corpus, mandamus, quo warranto, certiorari, pro-
23 hibition and injunction, and such other original and
24 remedial writs as may be necessary or proper to the
25 complete exercise of its appellate jurisdiction. Each
26 of the justices of the supreme court shall have power to
27 issue writs of habeas corpus to any part of the state,
28 upon petition by or on behalf of any person held in
29 actual custody, and may make such writs returnable
30 before himself, or the supreme court, or before any

1 district court of the state, or any judge thereof; and
2 such writs may be heard and determined by the justice
3 or court, or judge, before whom they are made returnable.
4 Each of the justices of the supreme court may also issue
5 and hear and determine writs of certiorari in proceedings
6 for contempt in the district court, and such other writs
7 as he may be authorized by law to issue.

8 Section 4. SUPREME COURT - TERMS. At least three
9 terms of the supreme court, and such other terms as may
10 be necessary to keep the docket current, shall be held
11 each year at the seat of government.

12 Section 5. SUPREME COURT - COMPOSITION - DISQUALIFI-
13 CATIONS. The supreme court shall consist of five justices
14 a majority of whom shall be necessary to form a quorum or
15 pronounce a decision, but one or more of said justices may
16 adjourn the court from day to day, or to a day certain.
17 The legislative assembly shall have the power to increase
18 the number of justices to seven.

19 In case a justice or justices of the supreme court
20 shall be in any way disqualified to sit in a cause brought
21 before such court, the remaining justice or justices shall
22 have power to call on one or more of the district judges
23 of this state as in the particular case may be necessary
24 to constitute the full number of justices of which the
25 said court shall then be composed, to sit with them in
26 the hearing of said cause. In all cases where a district
27 judge is invited to sit and does sit as by this section
28 provided, the decision and opinion of such district judge
29 shall have the same force and effect in any cause heard
30 before the court as if regularly participated in by a

justice of the supreme court.

1 Section 6. ELECTION AND TERM OF OFFICE OF SUPREME
2 COURT JUSTICES. The justices of the supreme court shall
3 be elected by the electors of the state at large, and
4 the term of the office of the justices of the supreme
5 court, except as in this constitution otherwise provided,
6 shall be six years.

7 Section 7. CLERK OF SUPREME COURT. There shall be
8 a clerk of the supreme court, who shall hold his office
9 for the term of six years. He shall be elected by the
10 electors at large of the state, and his compensation shall
11 be fixed by law, and his duties prescribed by law and by
12 the rules of the supreme court.

13 Section 8. JUSTICES OF SUPREME COURT - QUALIFICATIONS.
14 A United States citizen who has been a resident of Montana
15 for two years shall be eligible for the office of justice
16 of the supreme court if admitted to practice law in
17 Montana and experienced with the law in Montana for at
18 least five years immediately prior to filing for or being
19 appointed to the position of justice.

20 Section 9. DISTRICT COURTS - JURISDICTION. The
21 district courts shall have original jurisdiction in all
22 cases at law and in equity, including all cases which
23 involve the title or right of possession of real property,
24 or the legality of any tax, impost, assessment, toll or
25 municipal fine, and in all cases in which the debt, damage,
26 claim or demand, exclusive of interest and costs, or the
27 value of the property in controversy exceeds \$300; and in
28 all criminal cases amounting to felony, and in all cases
29 of misdemeanor not otherwise provided for; of actions of
30

1 forcible entry and unlawful detainer; of proceedings in
2 insolvency; of actions to prevent or abate a nuisance;
3 of all matters of probate; of actions of divorce and for
4 annulment of marriage, and for all such special actions
5 and proceedings as are not otherwise provided for. And
6 said courts shall have the power of naturalization, and
7 to issue papers therefor, in all cases where they are
8 authorized so to do by the laws of the United States.
9 They shall have appellate jurisdiction in such cases
10 arising in justices and other inferior courts in their
11 respective districts as may be prescribed by law and
12 consistent with this constitution. Their process shall
13 extend to all parts of the state, provided that all actions
14 for the recovery of, the possession of, quieting the
15 title to, or for the enforcement of liens upon real pro-
16 perty, shall be commenced in the county in which the real
17 property, or any part thereof, affected by such action or
18 actions, is situated. Said courts and the judges thereof
19 shall have power also to issue, hear and determine writs
20 of mandamus, quo warranto, certiorari, prohibition, in-
21 junction and other original and remedial writs, and also
22 all writs of habeas corpus on petition by, or on behalf
23 of, any person held in actual custody in their respective
24 districts. Injunctions, writs of prohibition and habeas
25 corpus, may be issued and served on legal holidays and
26 non-judicial days.

27 Section 10. JUDICIAL DISTRICTS. The state shall
28 be divided into judicial districts, in each of which
29 there shall be elected by the electors thereof one or more
30 judges of the district court as provided by law whose term

1 of office shall be four years. The legislative assembly
2 may increase or decrease the number of judges in any
3 judicial district; provided, that there shall be at least
4 one judge in any district established by law; and may
5 divide the state, or any part thereof, into new districts;
6 provided, that each be formed of compact territory and be
7 bounded by county lines, but no change in the number of
8 boundaries of the districts shall work a removal of any
9 judge from office during the term for which he has been
10 elected or appointed. Any judge of the district court
11 may hold court for any other district judge, and shall do
12 so when required by law.

13 Section 11. WRITS OF ERROR AND APPEAL. Writs of
14 error and appeal shall be allowed from the decisions of
15 district courts to the supreme court under such regulations
16 as may be prescribed by law.

17 Section 12. DISTRICT JUDGES - QUALIFICATIONS. No
18 person shall be eligible to the office of judge of the
19 district court unless engaged in the active practice of
20 law in the state of Montana for at least five years prior
21 to filing for or being appointed to the office of district
22 judge, and in addition shall be a citizen of the United
23 States and admitted to practice law in the supreme court
24 of the state of Montana. He or she need not be a resident
25 of the district for which elected at the time of election,
26 but after election he or she shall reside in the district
27 for which elected during the term of office.

28 Section 13. DISTRICT COURTS - BUSINESS DAYS - TERMS.
29 The district court in each county which is a judicial
30 district by itself shall be always open for the transaction

1 of business, except on legal holidays and non-judicial days.
2 In each district where two or more counties are united,
3 until otherwise provided by law, the judges of such district
4 shall fix the terms of court as may be necessary to keep the
5 docket current.

6 Section 14. CLERKS OF DISTRICT COURTS. There shall be
7 a clerk of the district court in each county, who shall be
8 elected by the electors of this county. The clerk shall be
9 elected at the same time and for the same term as the
10 district judge. The duties and compensation of the said
11 clerk shall be provided by law except that the clerk in
12 matters relating to procedure and the orderly conduct of the
13 court room and court hearings shall be supervised by the
14 district judge.

15 Section 15. COUNTY ATTORNEYS. There shall be elected
16 at the general election in each county of the state one
17 county attorney, who prior to taking office shall have been
18 admitted to practice law before the supreme court of the
19 state of Montana and must be of legal age at the time of
20 taking office, and whose term of office shall be four years
21 and until a successor is elected and qualified. He or she
22 shall have a salary to be fixed by law, one-half of which
23 shall be paid by the state, and the other half by the county
24 for which elected, and shall perform such duties as may be
25 required by law.

26 Section 16. JUSTICES OF THE PEACE - ELECTION -
27 QUALIFICATIONS - COMPENSATION - JURISDICTION. There shall
28 be elected in each county at least one justice of the peace
29 with qualifications, training, and monthly compensation as
30 provided by law, who shall hold office for the term of four

1 years. There shall be provided facilities for such justices
2 so that their duties may be performed in dignified surround-
3 ings. Justice courts shall have such original jurisdiction
4 within their respective counties as may be prescribed by
5 law. They shall not have trial jurisdiction in any criminal
6 case designated a felony, except as examining courts. The
7 legislature may provide for additional justices of the peace
8 in each county or other types of courts below the district
9 court level as is deemed necessary.

10 Section 17. APPEALS FROM JUSTICE COURTS. Justice
11 courts shall always be open for transaction of business,
12 except on legal holidays and non-judicial days. Appeal
13 shall be allowed from justice courts, in all cases, to the
14 district courts, in such manner under such regulations as
15 may be prescribed by law.

16 Section 18. POLICE AND MUNICIPAL COURTS. The legisla-
17 tive assembly shall have power to provide for creating such
18 police and municipal courts and magistrates for cities and
19 towns as may be deemed necessary from time to time, who shall
20 have jurisdiction in all cases arising under the ordinances
21 of such cities and towns, respectively; such police magis-
22 trates may also be constituted ex-officio justices of the
23 peace or magistrates for their respective counties.

24 Section 19. REMOVAL AND DISCIPLINE OF JUDGES. A
25 Judicial Standards Commission is hereby created to consist
26 of five persons, three of whom shall be judges. The three
27 judges shall be selected by the justices and judges of the
28 supreme court and district courts. Not more than one of
29 the said three judges may be a member of the supreme court.
30 The remaining two persons shall be citizens of the state of

1 Montana, selected and appointed by the governor. Neither of
2 said two persons shall be a justice, judge or magistrate of
3 any court or licensed to practice law in this state, nor
4 shall they be a member of the executive, judicial or legisla-
5 tive departments of the state of Montana. The original three
6 judges shall be appointed for terms of one, three and five
7 years respectively and the original gubernatorial appointees
8 shall serve for two and four years respectively. Thereafter
9 each commissioner shall serve for a term of five years. If
10 a position in the Commission becomes vacant for any reason,
11 the successor shall be selected by the original appointing
12 authority in the same manner as the original appointment was
13 made and shall serve for the remainder of the term vacated.
14 No act of the Commission is valid unless concurred in by a
15 majority of its members. The Commission shall select one of
16 its members to serve as chairman.

17 In accordance with this section, any justice, judge or
18 magistrate of any court may be disciplined or removed for
19 willful misconduct in office or willful and persistent
20 failure to perform his duties or habitual intemperance, or
21 he may be retired for disability seriously interfering with
22 the performance of his duties which is, or likely to become,
23 of a permanent character. The Commission may, after investi-
24 gation it deems necessary, order a hearing to be held before
25 it concerning the discipline, removal or retirement of a
26 justice, judge or magistrate, or the Commission may appoint
27 three masters who are justices or judges of courts of record
28 to hear and take evidence in the matter and to report their
29 findings to the Commission. After hearing or after consider-
30 ing the record and the findings and report of the masters,

1 if the Commission finds good cause, it shall recommend to
2 the supreme court the discipline, removal or retirement
3 of the justice, judge or magistrate.

4 The supreme court shall review the record of the pro-
5 ceedings on the law and facts and may permit the introduction
6 of additional evidence, and it shall order the discipline,
7 removal or retirement as it finds just and proper or wholly
8 reject the recommendation. Upon an order for his retire-
9 ment, any justice, judge or magistrate participating in a
10 statutory retirement program shall be retired with the same
11 rights as if he had retired pursuant to the retirement
12 program. Upon an order for removal, the justice, judge or
13 magistrate shall thereby be removed from office, and his
14 salary shall cease from the date of the order.

15 The Judicial Standards Commission shall make rules
16 implementing this section and providing for confidentiality
17 of proceedings.

18 Section 20. COURTS OF RECORD. The supreme and district
19 courts shall be courts of record.

20 Section 21. LAWS RELATING TO COURTS - UNIFORM. All
21 laws relating to the courts shall be general and of uniform
22 operation throughout the state; and the organization, juris-
23 diction, powers, proceedings and practice of all courts of
24 the same class or grade, so far as regulated by law, shall
25 be uniform.

26 Section 22. STYLE OF PROCESS. The style of process
27 shall be "The State of Montana" and all prosecutions shall
28 be conducted by the name and the authority of the same.

29 Section 23. FORM OF ACTION. There shall be but one
30 form of civil action, and law and equity may be administered

1 in the same action.

2 Section 24. JUDICIAL COMPENSATION. The justices of
3 the supreme court and the judges of the district court shall
4 be paid monthly by the state, a salary, which shall not be
5 diminished during the terms which they shall have been
6 respectively elected. The salaries of justices of the peace
7 shall be paid monthly by the counties or the state as may be
8 prescribed by law. All salaries paid to justices and to
9 judges shall be in an amount sufficient to attract capable
10 and experienced lawyers to the judicial service.

11 Section 25. PROHIBITION OF OUTSIDE INCOME. No justice
12 of the supreme court nor judge of the district court nor
13 magistrate or justice of peace paid a monthly salary shall
14 accept or receive any compensation, fee, perquisite or
15 emolument for or on account of his office, in any form what-
16 ever, except salary and actual necessary travel expense as
17 provided by law.

18 Section 26. LAW PRACTICE PROHIBITED. No justice or
19 clerk of the supreme court, nor judge or clerk of any
20 district court shall act or practice as an attorney or
21 counsellor at law in any court of this state during his
22 continuance in office. Magistrates or justices of the
23 peace shall not practice law in justice of the peace or
24 magistrate courts.

25 Section 27. SUPREME COURT OPINIONS. All opinions of
26 the supreme court shall be in writing and subscribed there-
27 to by the concurring justices and the dissenting justices
28 and such opinions and decisions shall be published in
29 official reports of the supreme court. The legislative
30 assembly may provide for the publication of decisions and

1 opinions of the supreme court.

2 Section 28. RESIDENCE OF JUDICIAL OFFICERS. All
3 officers provided for in this Article, except justices of
4 the supreme court, who shall reside within the state, shall
5 respectively reside during their term of office in the
6 district, county, township, precinct, city or town in which
7 they may be elected or appointed.

8 Section 29. VACANCIES; NON-SUCCESSION OF APPOINTEE.
9 Vacancies in the office of justice of the supreme court, or
10 judge of the district court, or other appellate court, or
11 clerk of the supreme court, shall be filled by appointment,
12 by the governor of the state, and vacancies in the offices
13 of county attorney, clerk of the district court, and other
14 judicial offices, shall be filled by appointment, by the
15 board of county commissioners of the county where such
16 vacancy occurs. A person appointed to fill any such vacancy
17 shall hold his office until the next general election and
18 until his successor is elected and qualified. A person
19 elected to fill a vacancy shall hold office until the
20 expiration of the term for which the person he succeeds
21 was elected.

22 No judicial officer hereafter appointed by the governor
23 as provided in this section is eligible to be a candidate
24 for judicial office for a period of one year after his
25 successor has been elected.

26 Section 30. INELIGIBILITY FOR PUBLIC OFFICE. No
27 justice of the supreme court or district judge shall hold
28 any other public office, except that he may be a member of
29 the Judicial Standards Commission, while he remains in the
30 office to which he has been elected or appointed.

1 Section 31. JUDGE PRO TEMPORE. Civil actions in the
2 district court may be tried by a judge pro tempore, who must
3 be a member of the bar of the state, agreed upon in writing
4 by the parties litigant, or their attorneys of record,
5 approved by the court, and sworn to try the causes; and in
6 such cases any order, judgment or decree, made or rendered
7 therein by such judge pro tempore, shall have the same force
8 and effect as if made or rendered by the court with the
9 regular judge presiding.

10 Section 32. FORFEITURE OF JUDICIAL OFFICE. Any
11 judicial officer who shall absent himself from the state
12 for more than sixty consecutive days shall be deemed to
13 have forfeited his office.
14
15

16
17 *David L. Holland*
18 David L. Holland, Chairman

19
20
21
22 *Cesar B. Aronow*
23 Cesar B. Aronow

24 *Leslie Joe Eskildsen*
25 Leslie Joe Eskildsen

26 *Rod Hanson*
27 Rod Hanson

28 *John M. Schiltz*
29 John M. Schiltz
30

1 COMMENTS ON MAJORITY PROPOSAL

2 *Section 1. JUDICIAL POWER. The judicial power is*
3 *vested in a supreme court, district courts, justice of the*
4 *peace courts, and such other courts as the legislative*
5 *assembly may establish.*

6 COMMENTS

7 (1) The proposed revision eliminates the vesting of
8 judicial power in the senate sitting as a court of impeach-
9 ment. Section 16, Article V of the 1889 constitution
10 adequately covers this field. It is contemplated that any
11 new legislative article will **retain** the impeachment provision.

12 (2) Vesting of judicial power in justices of the
13 peace courts, rather than in "justices of the peace" as in
14 the 1889 constitution, was done for parallel terminology.

15 (3) The 1889 constitution provided for vesting judicial
16 power in "such other inferior courts as the legislative
17 assembly may establish". This revision vests the power in
18 "such other courts" in anticipation of a need in the future
19 for intermediate appellate courts. This language permits
20 that to be done.

21 *Section 2. SUPREME COURT - APPELLATE JURISDICTION.*
22 *The supreme court, except as otherwise provided in this*
23 *constitution, shall have appellate jurisdiction only, which*
24 *shall be co-extensive with the state.*

25 COMMENTS

26 The revision deletes the supreme court's power of
27 supervisory control over inferior courts. As written in
28 the 1889 constitution, the power **was** given to the supreme
29 court under such regulations and limitations as may be
30 prescribed by law. Although the legislature has never

provided regulations, the supreme court in 1900 assumed the power to act supervisory - going so far as to invent a writ of supervisory control, unique in the United States. The use of the writ has grown to the point where it is used when other specifically authorized writs, or appeals, would serve as well. The provision was deleted as (1) unnecessary and (2) to avoid an unseemly avoidance of the express provisions of the 1889 constitution.

Section 3. SUPREME COURT - APPELLATE JURISDICTION - WRITS. The appellate jurisdiction of the supreme court shall extend to all cases at law and in equity, subject, however, to such limitations and regulations as may be prescribed by law. Said court shall have power in its discretion to issue and to hear and determine writs of habeas corpus, mandamus, quo+warranto, certiorari, prohibition and injunction, and such other original and remedial writs as may be necessary or proper to the complete exercise of its appellate jurisdiction. Each of the **justices** of the supreme court shall have power to issue writs of habeas corpus to any part of the state, upon petition by or on behalf of any person held in actual custody, and may make such writs returnable before himself, or the supreme court, or before any district court of the state, or any judge thereof; and such writs may be heard and determined by the justice or court, or judge, before whom they are made returnable. Each of the justices of the supreme court may also issue and hear and determine writs of certiorari in proceedings for contempt in the district court, and such other writs as he may be authorized by law to issue.

COMMENTS

1 court shall then be composed, to sit with them in the hearing
2 of said cause. In all cases where a district judge is
3 invited to sit and does sit as by this section provided,
4 the decision and opinion of such district judge shall have
5 the same force and effect in any cause heard before the court
6 as if regularly participated in by a justice of the supreme
7 court.

8 COMMENTS

9 The legislature is given the power to increase the number
10 of justices on the supreme court from the present five to
11 seven if the need arises. If the work load of the supreme
12 court should increase, then the legislature may increase
13 the number of justices by two without amending the consti-
14 tution.

15 Section 6. ELECTION AND TERM OF OFFICE OF SUPREME
16 COURT JUSTICES. The justices of the supreme court shall
17 be elected by the electors of the state at large, and the
18 term of the office of the justices of the supreme court,
19 except as in this constitution otherwise provided, shall
20 be six years.

21 COMMENTS

22 Section 6 is a combination of Article VIII, Sections
23 6 and 7 of the 1889 constitution.

24 Section 7. CLERK OF SUPREME COURT. There shall be a
25 clerk of the supreme court, who shall hold his office for
26 the term of six years. He shall be elected by the electors
27 at large of the state, and his compensation shall be fixed
28 by law, and his duties prescribed by law and by the rules
29 of the supreme court.

30 COMMENTS

1 requirement. The intention was to make the law experience
2 entirely related to legal work.

3 Section 9. DISTRICT COURTS - JURISDICTION. The district
4 courts shall have original jurisdiction in all cases at law
5 and in equity, including all cases which involve the title
6 or right of possession of real property, or the legality
7 of any tax, impost, assessment, toll or municipal fine, and
8 in all cases in which the debt, damage, claim or demand,
9 exclusive of interest and costs, or the value of the
10 property in controversy exceeds three hundred dollars; and
11 in all criminal cases amounting to felony, and in all cases
12 of misdemeanor not otherwise provided for; of actions of
13 forcible entry and unlawful detainer; of proceedings in
14 insolvency; of actions to prevent or abate a nuisance; of
15 all matters of probate; of actions of divorce and for
16 annulment of marriage, and for all such special actions
17 and proceedings as are not otherwise provided for. And said
18 courts shall have the power of naturalization, and to issue
19 papers therefor, in all cases where they are authorized so
20 to do by the laws of the United States. They shall have
21 appellate jurisdiction in such cases arising in justices
22 and other inferior courts in their respective districts as
23 may be prescribed by law and consistent with this consti-
24 tution. Their process shall extend to all parts of the
25 state, provided that all actions for the recovery of, the
26 possession of, quieting the title to, or for the enforcement
27 of liens upon real property, shall be commenced in the county
28 in which the real property, or any part thereof, affected by
29 such action or actions, is situated. Said courts and the
30 judges thereof shall have power also to issue, hear and

1 determine writs of mandamus, quo warranto, certiorari, pro-
2 hibition, injunction and other original and remedial writs,
3 and also all writs of habeas corpus on petition by, or on
4 behalf of, any person held in actual custody in their
5 respective districts. Injunctions, writs of prohibition
6 and habeas corpus, may be issued and served on legal holidays
7 and non-judicial days.

8 COMMENTS

9 Section 9 is a re-enactment of Article VIII, Section 11
10 of the 1889 constitution, changing only the minimum amount
11 for jurisdiction from \$50.00 to \$300.00 and adding language
12 of "exclusive of interest and costs". Some consideration was
13 given by the committee to adopting simplified language to
14 define jurisdiction of the district court by using the term
15 "justiciable matters". Upon due consideration the committee
16 decided that the term was not precise enough to fit the
17 situation.

18 In all of the delegate proposals, citizens' suggestions
19 and testimony heard by the committee concerning a new
20 judicial article, no person made any complaint about juris-
21 diction of the district courts as set forth above even
22 though the section is not brief and concise. In view of
23 the fact that it has existed in the constitution for 83
24 years without causing difficulty and seems to have been
25 fully defined by the courts, the majority decided to keep
26 the language intact.

27 Section 10. JUDICIAL DISTRICTS. The state shall be
28 divided into judicial districts, in each of which there
29 shall be elected by the electors thereof one or more judges
30 of the district court as provided by law whose term of

1 office shall be four years. The legislative assembly may
2 increase or decrease the number of judges in any judicial
3 district; provided, that there shall be at least one judge
4 in any district established by law; and may divide the state,
5 or any part thereof, into new districts; provided, that
6 each be formed of compact territory and be bounded by
7 county lines, but no change in the number or boundaries
8 of the districts shall work a removal of any judge from
9 office during the term for which he has been elected or
10 appointed. Any judge of the district court may hold court
11 for any other district judge, and shall do so when required
12 by law.

13 COMMENTS

14 Section 10 combines three sections from the 1889 con-
15 stitution, to-wit: Article VIII, Sections 12, 13 and 14. The
16 majority finds no necessity to change the existing judicial
17 districts by amending the constitution. Under the 1889
18 constitution, Article VIII, Section 14, the legislative
19 assembly was granted the power to change the boundaries of
20 districts and increase or decrease the number of judges.
21 This power will again be given to the legislature.

22 Section 11. WRITS OF ERROR AND APPEAL. Writs of
23 error and appeal shall be allowed from the decisions of
24 district courts to the supreme court under such regulations
25 as may be prescribed by law.

26 COMMENTS

27 Section 11 is identical to Article VIII, Section 15
28 of the 1889 constitution. All members signing the majority
29 report felt no change was necessary.

30 Section 12. DISTRICT JUDGES- QUALIFICATIONS. No

1 person shall be eligible to the office of judge of the
2 district court unless engaged in the active practice of law
3 in the state of Montana for at least five years prior to
4 filing for or being appointed to the office of district
5 judge, and in addition shall be a citizen of the United
6 States and admitted to practice law in the supreme court of
7 the state of Montana. He or she need not be a resident
8 of the district for which elected at the time of election,
9 but after election he or she shall reside in the district for
10 which elected during the term of office.

11 COMMENTS

12 Section 12 changes Article VIII, Section 16 of the 1889
13 constitution. The 1889 constitution provides that in order
14 for a person to be eligible for office of judge of district
15 court, he shall be (1) at least twenty-five; (2) citizen of
16 the United States; (3) admitted to practice law in the
17 supreme court of Montana; (4) residing in state of Montana
18 at least one year.

19 After due consideration the majority of the committee
20 felt that some of the foregoing requirements were valid but
21 others should be changed. Thereupon the majority changed
22 the requirements to (1) a citizen of the United States; (2)
23 admitted to practice law in the supreme court of Montana;
24 (3) must be engaged in active practice of law in Montana for
25 five years prior to filing for or being appointed to the
26 office of district judge. The requirement of experience was
27 determined more valid than the requirement of age, the
28 committee feeling that five years experience would give the
29 necessary qualifications rather than a simple age requirement.
30 The experience requirement for the district judges in this

1 section is materially different from the requirements for
2 supreme court judges in Section 8. The committee felt that
3 law teachers and others working with the law for five years
4 was a sufficient requirement for a supreme court judge, be-
5 cause the nature of the court is appellate rather than
6 trial. A different type of experience and background is
7 required for district judges who must function at the trial
8 level.

9 The trial judge, in the opinion of the committee,
10 needs trial experience which can only be gained in active
11 practice of law and thus the requirement in Section 12 is
12 five years in the active practice of law.

13 *Section 13. DISTRICT COURTS - BUSINESS DAYS - TERMS.*
14 *The district court in each county which is a judicial dis-*
15 *trict by itself shall be always open for the transaction of*
16 *business, except on legal holidays and non-judicial days.*
17 *In each district where two or more counties are united,*
18 *until otherwise provided by law, the judges of such district*
19 *shall fix the terms of court as may be necessary to keep*
20 *the docket current.*

21 COMMENTS

22 Section 13 is identical with Article VIII, Section 17
23 of the 1889 constitution except that the following language
24 of Section 17 is deleted from Section 13: "provided that
25 there shall be at least four terms a year held in each
26 county"; the following language is added: "as may be nec-
27 essary to keep the docket current." The majority of the
28 committee felt that the number of terms of court should be
29 adjusted in accordance with the volume of the case load of
30 the court; so, rather than arbitrarily setting number of terms

of court a year, this section directs a number of terms of court sufficient to keep the docket current.

Section 14. CLERKS OF DISTRICT COURTS. There shall be a clerk of the district court in each county, who shall be elected by the electors of this county. The clerk shall be elected at the same time and for the same term as the district judge. The duties and compensation of the said clerk shall be provided by law except that the clerk in matters relating to procedure and the orderly conduct of the court room and court hearings shall be supervised by the district judge.

COMMENTS

Section 14 is identical with Article VIII, Section 18 of the 1889 constitution except the following language has been added: "except that the clerk in matters relating to procedure and the orderly conduct of the court room and court hearings shall be supervised by the district judge". Based upon the hearings, it was felt that there might be some conflict between the clerk of court and the district judge over the authority of district judges to require orderly conduct of the court room and court hearings. The committee felt that it was mandatory that the district judge have full control of these matters so this language was added to Section 14 to clarify that the district judge has full charge of the orderly conduct of the court room and court hearings.

Section 15. COUNTY ATTORNEYS. There shall be elected at the general election in each county of the state one county attorney, who prior to taking office shall have been admitted to practice law before the supreme court of the state

1 of Montana and must be of legal age at the time of taking
2 office, and whose term of office shall be four years and
3 until a successor is elected and qualified. He or she
4 shall have a salary to be fixed by law, one-half of which
5 shall be paid by the state, and the other half by the
6 county for which elected, and shall perform such duties as
7 may be required by law.

8 COMMENTS

9 Section 15 is intended as a substitute for Article
10 VIII, Section 19 of the 1889 constitution. The only
11 difference between the two sections is that the age require-
12 ment of Section 19 has been deleted, the majority of the
13 committee feeling that this age requirement is unnecessary.

14 Section 16. JUSTICES OF THE PEACE - ELECTION -
15 QUALIFICATIONS - COMPENSATION - JURISDICTION. There shall
16 be elected in each county at least one justice of the peace
17 with qualifications, training, and monthly compensation as
18 provided by law, who shall hold office for the term of
19 four years. There shall be provided facilities for such
20 justices so that their duties may be performed in dignified
21 surroundings. Justice courts shall have such original
22 jurisdiction within their respective counties as may be
23 prescribed by law. They shall not have trial jurisdiction
24 in any criminal case designated a felony, except as
25 examining courts. The legislature may provide for addi-
26 tional justices of the peace in each county or other types
27 of courts below the district court level as is deemed
28 necessary.

29 COMMENTS

30 Sections 16 and 17 of the majority report are given in

1 full replacement of Article VIII, Sections 20, 21, 22 and
2 23.

3 Section 16 requires that there be one justice of the
4 peace in each county rather than two justices of peace in
5 each township. Under the present Section 20 and inter-
6 pretation of it, there must be two townships in each county
7 and two justices of the peace to each township. Thus, a
8 county, no matter how large or small, must have a minimum
9 of four justices of the peace under Article VIII, Section
10 20 of the 1889 constitution.

11 Instead of a minimum of four justices of the peace to
12 each county, the majority proposal provides for a minimum
13 of one for each county. The majority committee believes
14 that in some counties one justice of the peace will be
15 sufficient. However, if circumstances demand, the legisla-
16 ture may provide for additional justices of the peace. The
17 qualifications, training and monthly compensation of jus-
18 tices of the peace are left to the legislature as is the
19 jurisdiction of justice courts. The committee believes that
20 this provision is sufficiently elastic to allow the legis-
21 lature to create small claims courts.

22 The majority of witnesses appearing before the committee
23 mentioned one consistent evil practiced under the 1889
24 constitution regarding justice of the peace courts. This
25 evil is that law enforcement officers have been filing cases
26 in one of the justice of the peace courts to the exclusion
27 of the other in the county because the law enforcement
28 officers evidently believe that they have a better chance
29 of conviction under one certain justice of the peace. Shop-
30 ping for a form to secure conviction cannot be tolerated

1 Section 19. REMOVAL AND DISCIPLINE OF JUDGES. A Judi-
2 cial Standards Commission is hereby created to consist of
3 five persons, three of whom shall be judges. The three
4 judges shall be selected by the justices and judges of the
5 supreme court and district courts. Not more than one of
6 the said three judges may be a member of the supreme court.
7 The remaining two persons shall be citizens of the state of
8 Montana, selected and appointed by the governor. Neither of
9 said two persons shall be a justice, judge or magistrate of
10 any court or licensed to practice law in this state, nor
11 shall they be a member of the executive, judicial or legis-
12 lative departments of the state of Montana. The original
13 three judges shall be appointed for terms of one, three and
14 five years respectively and the original gubernatorial
15 appointees shall serve for two and four years respectively.
16 Thereafter each commissioner shall serve for a term of five
17 years. If a position in the Commission becomes vacant for
18 any reason, the successor shall be selected by the original
19 appointing authority in the same manner as the original
20 appointment was made and shall serve for the remainder of
21 the term vacated. No act of the Commission is valid unless
22 concurred in by a majority of its members. The Commission
23 shall select one of its members to serve as chairman.

24 In accordance with this section, any justice, judge or
25 magistrate of any court may be disciplined or removed for
26 willful misconduct in office or willful and persistent
27 failure to perform his duties or habitual intemperance, or
28 he may be retired for disability seriously interfering with
29 the performance of his duties which is, or likely to become,
30 of a permanent character. The Commission may, after

1 investigation it deems necessary, order a hearing to be held
2 before it concerning the discipline, removal or retirement
3 of a justice, judge or magistrate, or the Commission may
4 appoint three masters who are justices or judges of courts
5 of record to hear and take evidence in the matter and to
6 report their findings to the Commission. After hearing or
7 after considering the record and the findings and report of
8 the masters, if the Commission finds good cause, it shall
9 recommend to the supreme court the discipline, removal or
10 retirement of the justice, judge or magistrate.

11 The supreme court shall review the record of the pro-
12 ceedings on the law and facts and may permit the introduction
13 of additional evidence, and it shall order the discipline,
14 removal or retirement as it finds just and proper or wholly
15 reject the recommendation. Upon an order for his retirement,
16 any justice, judge or magistrate shall thereby be removed
17 from office, and his salary shall cease from the date of
18 the order.

19 The Judicial Standards Commission shall make rules
20 implementing this section and providing for confidentiality
21 of proceedings.

22 COMMENTS

23 Section 19 is an entirely new section. It is modeled
24 with some modification from the New Mexico constitutional
25 provision adopted by the people of that state in 1967. We
26 have modified the composition of the Judicial Standards
27 Commission to conform, in our opinion, to the needs of
28 Montana. The balance of the article is drafted from the
29 provisions of the New Mexico constitution. We have
30 examined the Alaska, Puerto Rico, Hawaii, California,

1 Colorado, Idaho, Virginia, and Kansas constitutions as well
2 as New Mexico, and have determined that the New Mexico pro-
3 vision is more in keeping with the needs of Montana than
4 those provisions appearing in other constitutions. It is
5 the purpose of this section to provide for the situation,
6 short of impeachment, where a judge because of age or other
7 disability or bad habits becomes derelict in the performance
8 of his duties. Under this provision his retirement or
9 censure or removal from office can be accomplished without
10 an undue amount of bad publicity to the judicial system or
11 embarrassment to anyone concerned. In the event removal
12 becomes necessary then the commission makes its recommendation
13 to the supreme court who will look into the matter and may
14 order a hearing in the matter, and then make such disposi-
15 tion of the case as may be proper.

16 *Section 20. COURTS OF RECORD. The supreme and*
17 *district courts shall be courts of record.*

18 COMMENTS

19 Section 20 is identical with Article VIII, Section 25
20 of the 1889 constitution and the majority committee feels
21 no necessity for change in this section.

22 *Section 21. LAWS RELATING TO COURTS - UNIFORM. All*
23 *laws relating to the courts shall be general and of uniform*
24 *operation throughout the state; and the organization,*
25 *jurisdiction, powers, proceedings and practice of all*
26 *courts of the same class or grade, so far as regulated by*
27 *law, shall be uniform.*

28 COMMENTS

29 Section 21 is identical with Article VIII, Section 26
30 of the 1889 constitution and the majority committee feels

1 no necessity for change in this section.

2 Section 22. *STYLE OF PROCESS.* The style of all pro-
3 cess shall be "The State of Montana" and all prosecutions
4 shall be conducted by the name and the authority of the same.

5 COMMENTS

6 Section 22 is identical with Article VIII, Section 27
7 of the 1889 constitution and the majority committee feels no
8 necessity for change in the section.

9 Section 23. *FORM OF ACTION.* There shall be but one
10 form of civil action, and law and equity may be administered
11 in the same action.

12 COMMENTS

13 Section 23 is identical with Article VIII, Section 28
14 of the 1889 constitution and the majority committee feels no
15 necessity for change in this section.

16 Section 24. *JUDICIAL COMPENSATION.* The justices of
17 the supreme court and the judges of the district court shall
18 be paid monthly by the state, a salary, which shall not be
19 diminished during the terms which they shall have been
20 respectively elected. The salaries of justices of the peace
21 shall be paid monthly by the counties or the state as may
22 be prescribed by law. All salaries paid to justices and to
23 judges shall be in an amount sufficient to attract capable
24 and experienced lawyers to the judicial service.

25 COMMENTS

26 This section is identical to Article VIII, Section 29
27 of the 1889 constitution with the exception that the justices
28 of the supreme court and the judges of the district court
29 are paid monthly rather than quarterly. This conforms to
30 the established practice now existing which is in fact in

1 disregard of the provisions of the 1889 constitution. An
2 additional sentence has been inserted to provide that the
3 salaries of the justices of the supreme court and judges
4 of the district court will be in an amount sufficient to
5 attract capable and experienced lawyers to the judicial
6 service.

7 Section 25. PROHIBITION OF OUTSIDE INCOME. No justice
8 of the supreme court nor judge of the district court nor
9 magistrate or justice of peace paid a monthly salary shall
10 accept or receive any compensation, fee, perquisite or
11 emolument for or on account of his office, in any form
12 whatever, except salary and actual necessary travel
13 expense as provided by law.

14 COMMENTS

15 Section 25 is a modification of Article VIII, Section
16 30 of the 1889 constitution, in that it allows actual neces-
17 sary travel expense as provided by law whereas this was
18 prevented under Section 30.

19 Section 26. LAW PRACTICE PROHIBITED. No justice or
20 clerk of the supreme court, nor judge or clerk of any
21 district court shall act or practice as an attorney or
22 counsellor at law in any court of this state during his
23 continuance in office. Magistrates or justices of the
24 peace shall not practice law in justice of the peace or
25 magistrate courts.

26 COMMENTS

27 Section 26 is identical with Article VIII, Section 31
28 except the following sentence was added: "Magistrates or
29 justices of the peace shall not practice law in justice of
30 the peace or magistrate courts."

1 The upgrading of justice of peace courts is contemplated
2 by Section 20 of the majority report. The committee believes
3 that the legislature can allow a justice of peace or magistrate
4 to practice law in other courts of the state of Montana while
5 holding the office of justice of peace or magistrate, but
6 they cannot allow a justice of peace or magistrate to
7 practice law in justice of peace or magistrate courts. The
8 majority committee feels that by allowing lawyers to hold a
9 position as justice of peace and at the same time to practice
10 in other courts would allow practicing lawyers to supplement
11 income as a justice of peace by practicing in other courts.

12 Section 27. SUPREME COURT OPINIONS. All opinions of
13 the supreme court shall be in writing and subscribed there-
14 to by the concurring justices and the dissenting justices
15 and such opinions and decisions shall be published in
16 official reports of the supreme court. The legislative
17 assembly may provide for the publication of decisions and
18 opinions of the supreme court.

19 COMMENTS

20 The last sentence of Section 27 is identical with
21 Article VIII, Section 32 of the 1889 constitution, except
22 that a further requirement is made that all opinions of the
23 supreme court shall be in writing and subscribed thereto by
24 the dissenting justices. That portion which has been added
25 is for the most part being done in practice, the majority
26 of the committee feeling that this practice shall be made a
27 requirement of the court.

28 Section 28. RESIDENCE OF JUDICIAL OFFICERS. All
29 officers provided for in this Article, except justices of
30 the supreme court, who shall reside within the state, shall

1 respectively reside during their term of office in the
2 district, county, township, precinct, city or town in which
3 they may be elected or appointed.

4 COMMENTS

5 Section 28 is identical to Article VIII, Section 33 of
6 the 1889 constitution. The majority of the committee feels
7 that Section 33 shall be adopted as Section 29 without change.

8 Section 29. VACANCIES; NON-SUCCESSION OF APPOINTEE.
9 Vacancies in the office of justice of the supreme court, or
10 judge of the district court, or other appellate court, or
11 clerk of the supreme court, shall be filled by appointment,
12 by the governor of the state, and vacancies in the offices
13 of county attorney, clerk of the district court, and other
14 judicial offices, shall be filled by appointment, by the
15 board of county commissioners of the county where such
16 vacancy occurs. A person appointed to fill any such vacancy
17 shall hold his office until the next general election and
18 until his successor is elected and qualified. A person
19 elected to fill a vacancy shall hold office until the
20 expiration of the term for which the person he succeeds
21 was elected.

22 No judicial officer hereafter appointed by the governor
23 as provided in this section is eligible to be a candidate
24 for judicial office for a period of one year after his
25 successor has been elected.

26 COMMENTS

27 The first paragraph of this section is identical to
28 Article VIII, Section 34 of the 1889 constitution. The
29 second paragraph is a new provision. The purpose of this
30 new provision is to eliminate the advantage of the "created"

1 incumbent in a judicial election contest. The majority of
2 the committee recognizes that there is a growing tendency for
3 judges to retire during their terms so that the governor
4 appoints a judge to serve until the next general election
5 when the appointee then runs for the office as the incumbent.
6 This appears to be an undue advantage in a system which
7 provides for election of judges.

8 Section 30. INELIGIBILITY FOR PUBLIC OFFICE. No jus-
9 tice of the supreme court or district judge shall hold any
10 other public office, except that he may be a member of the
11 Judicial Standards Commission, while he remains in the office
12 to which he has been elected or appointed.

13 COMMENTS

14 Section 30 is identical with Article VIII, Section 35
15 of the 1889 constitution except that the following language
16 is added: "except that he may be a member of the Judicial
17 Standards Commission". The 1889 constitution does not have
18 the requirement for a Judicial Standards Commission and under
19 Section 20 of the majority report, a Judicial Standards
20 Commission is now part of the proposed judicial article.
21 Three justices are required to sit on the Judicial Standards
22 Commission and thus the foregoing membership on the
23 Commission is excepted to make clear that there will be no
24 violation by a justice or judge being a member of the Judi-
25 cial Standards Commission.

26 Section 31. JUDGE PRO TEMPORE. Civil actions in the
27 district court may be tried by a judge pro tempore, who must
28 be a member of the bar of the state, agreed upon in writing
29 by the parties litigant, or their attorneys of record,
30 approved by the court, and sworn to try the causes; and in

1 such cases any order, judgment or decree, made or rendered
2 therein by such judge pro tempore, shall have the same force
3 and effect as if made or rendered by the court with the
4 regular judge presiding.

5 COMMENTS

6 Section 31 of the majority report is identical with
7 Article VIII, Section 36 of the 1889 constitution, except
8 in Section 36 a civil action is changed to civil actions.
9 This is self-explanatory.

10 Section 32. FORFEITURE OF JUDICIAL OFFICE. Any
11 judicial officer who shall absent himself from the state
12 for more than sixty consecutive days shall be deemed to
13 have forfeited his office.

14 COMMENTS

15 Section 32 is identical with Article VIII, Section 37
16 of the 1889 constitution.

SEPARATE MAJORITY PROPOSAL ON CAMPAIGN EXPENSES

BE IT PROPOSED BY THE JUDICIARY COMMITTEE:

That there be a section in the new judicial article to read as follows:

Section ____ . CAMPAIGN EXPENSES. The legislative assembly shall appropriate funds for the contested general election campaign expenses of candidates for the offices of justices of the supreme court and district court judges and shall enact laws regulating the amount, expenditure and disposition thereof. No candidate for justice of the supreme court or district court judge, nor any person or persons on his or her behalf, shall expend money in a campaign for the office in excess of the amount appropriated and authorized by the legislative assembly.


David L. Holland, Chairman

Catherine Pemberton, Vice Chairman


Cedar B. Aronow

Jean M. Bowman


Rod Hanson


J. Mason Melvin


John M. Schiltz

Leslie "Joe" Eskildsen


Ben E. Berg, Jr.

1 COMMENTS ON SEPARATE MAJORITY PROPOSAL ON CAMPAIGN EXPENSES

2 Section _____. CAMPAIGN EXPENSES. The legislative
3 assembly shall appropriate funds for the contested general
4 election campaign expenses of candidates for the offices
5 of justices of the supreme court and district court judges
6 and shall enact laws regulating the amount, expenditure
7 and disposition thereof. No candidate for justice of the
8 supreme court or district court judge, nor any person or
9 persons on his or her behalf, shall expend money in a
10 campaign for the office in excess of the amount appropriated
11 and authorized by the legislative assembly.

12 COMMENTS

13 Both the minority and majority proposals of the
14 committee contemplate an election of judges, presumably
15 in a non-partisan contest. In either case there will be
16 the same problems we have always had: (1) the necessity
17 that the judge demean himself and his position by seeking
18 campaign funds; (2) the fact that the wrong people can
19 make contributions; (3) the fact that lawyers are the
20 biggest contributors and solicitors of campaign funds to
21 the detriment of themselves than the candidate; (4) the
22 fact that the candidate with the most money to spend is
23 the more likely to win regardless of merit; and (5) the
24 fact that the appearance of justice suffers in the process.

25 The committee majority proposes this special section
26 as a means of curing the defects in election of judges
27 and believes that the expense is warranted in view of the
28 benefits to be obtained.

MINORITY PROPOSAL

1 BE IT PROPOSED BY THE JUDICIARY COMMITTEE:

2 That there be a new Article on the Judiciary to read
3 as follows:

4
5 ARTICLE _____

6 THE JUDICIARY

7 Section 1. JUDICIAL POWER. The judicial power of the
8 state is vested in a supreme court and district courts and
9 such other courts as may be provided by law.

10 Section 2. SUPREME COURT POWERS. The supreme court
11 shall have final appellate jurisdiction and general super-
12 visory and administrative control over all courts.

13 The supreme court may make rules for the practice of
14 law and judicial administration in all courts.

15 The supreme court shall have such power to make rules
16 of procedure as may be provided by law.

17 The supreme court shall have original jurisdiction to
18 issue, hear and determine all writs appropriate to the
19 exercise of its jurisdiction, including the writ of habeas
20 corpus.

21 Section 3. SUPREME COURT ORGANIZATION. The supreme
22 court shall consist of one chief justice and four justices,
23 a majority of whom will be necessary to pronounce the
24 decision, which must be in writing and signed by the majority.

25 The legislative assembly may increase the number of
26 justices from five to seven.

27 District judges shall be substituted for the chief
28 justice or the justices in the event of disqualification
29 or disability, in any cause, and the opinion of the district
30 judge sitting with the supreme court shall have the same

1 effect as an opinion of a justice of the supreme court.

2 Section 4. DISTRICT COURT POWERS. Original juris-
3 diction of all matters and causes, both civil and criminal,
4 including the power to issue, hear and determine original
5 and remedial writs is vested in the district courts, but
6 distribution of concurrent jurisdiction with other courts
7 may be provided by law.

8 Until otherwise provided by law, appeals from inferior
9 courts must be tried anew in the district court. District
10 courts shall also have jurisdiction to review decisions of
11 administrative boards and commissions and they shall have
12 such additional jurisdiction as may be delegated by the laws
13 of the United States and the state of Montana. The supreme
14 court and district court process shall extend to all parts
15 of the state.

16 Section 5. JUDICIAL DISTRICTS. The legislative
17 assembly shall divide the state into judicial districts and
18 provide for the number of judges in each district.

19 The legislative assembly shall have the power to
20 change the number of judicial districts and their boundaries
21 and the number of judges and magistrates in each district;
22 however, each district shall be formed of compact
23 territory and be bounded by county lines, but no changes
24 in the number or boundaries of districts shall work a
25 removal of any judge from office during the term for
26 which he has been elected or appointed.

27 The chief justice may assign the district judge
28 and other judges for temporary service from one district
29 to another, and from one county to another.

30 Section 6. TERMS AND PAY OF JUDGES. Justices of the

1 supreme court, district court judges and other judges
2 shall be paid as provided by law, but their salary shall
3 not be diminished during their term of office.

4 Terms of office for supreme court justices shall be
5 six years.

6 Terms of office for district court judges shall be
7 four years.

8 Terms of office for other judges shall be provided
9 by law.

10 Section 7. SELECTION OF JUDGES. In all vacancies in
11 the offices of supreme court justices and district court
12 judges caused by death, resignation, removal, retirement
13 or failure of an incumbent judge to file a declaration of
14 candidacy for a succeeding term of office, the governor of
15 the state shall nominate a supreme court or district court
16 judge from nominees selected in the manner provided by
17 law. If the governor fails to nominate within thirty days
18 after receipt of the names of the nominees, the chief
19 justice or acting chief justice shall make the nomination.
20 Each nomination shall be confirmed by the senate, but a
21 nomination made while the senate is not assembled shall be
22 effective as an appointment until the end of the next
23 session of the senate. If the nomination is not confirmed
24 by the senate the office shall be vacant and another selection
25 and nomination shall be made.

26 Before the close of filings for nominations in the
27 first primary election after senate confirmation, the name
28 of the appointed judge shall be placed on a contested
29 non-partisan ballot if other candidates have filed for
30 election to that office. If there is no primary election

1 contest for the office, the name of the appointed judge
2 shall nevertheless be placed on a ballot in the general
3 election allowing voters of the state or district the choice
4 of his approval or rejection. Thereafter, the elected
5 judge shall be subject to approval or rejection in a
6 general election for each succeeding term of office. In
7 the event of rejection of a judge another selection and
8 nomination shall be made in like manner.

9 Section 8. QUALIFICATIONS AND LIMITATIONS OF JUDGES.

10 No person shall be eligible to the offices of justice
11 of the supreme court or judge of the district court unless
12 he or she shall have been admitted to the practice of law
13 in Montana for at least five years prior to the date of
14 appointment or election, is a citizen of the United States,
15 and has resided in the state of Montana two years immediately
16 before taking office. Qualifications and methods of
17 selection of judges of other courts shall be provided by
18 law.

19 No supreme court justice or district court judge shall
20 solicit or receive any compensation on account of his
21 office, in any form whatever, except salary and actual
22 necessary travel expense as provided by law.

23 Except as otherwise provided in this constitution, no
24 supreme court justice or district court judge shall practice
25 law during his term of office, engage in any other employ-
26 ment for which salary or fee is paid, or hold office in a
27 political party.

28 Filing for another elective public office results in
29 forfeiture of judicial position.

30 A district judge must reside in his district during

1 his term of office.

2 Section 9. DISQUALIFICATION OF JUDGES. The legislature
3 shall provide for disqualification of judges at any one or
4 all of the inferior, trial and appellate court levels.

5 Section 10. REMOVAL AND DISCIPLINE OF JUDGES AND
6 LAWYERS. There is created a Judicial Standards Commission
7 consisting of three judges, selected by the district judges,
8 of which not more than one can be a member of the supreme
9 court; two members of the Montana Bar, and two citizens
10 who do not hold any public office of the state of Montana
11 or any office of a political party, appointed by the governor.
12 Each vacancy on the Commission shall be filled in the same
13 manner as the original appointment was made and the appointee
14 shall serve for the remainder of the term vacated. No act
15 of the Commission is valid unless concurred in by a majority
16 of its members. The Commission shall select one of its
17 members to serve as chairman. Its proceedings shall be
18 confidential.

19 The Commission shall have the power to investigate,
20 including power to subpoena witnesses and documents, upon
21 complaint by any citizen or on its own motion, charges
22 which could be the basis for retirement, censure or removal
23 of any justice or judge or for the discipline, censure,
24 suspension or disbarment of any practicing lawyer in the
25 state of Montana. Upon finding charges to be well founded
26 the Commission shall file a formal complaint before the
27 supreme court. The supreme court shall hear such complaint,
28 and if it be substantiated may retire, censure or remove
29 any justice or judge or discipline, censure, suspend or
30 disbar any practicing lawyer. If the complaint be

1 against a justice, the court shall call in a district judge
2 as provided in Section 3 of this Article.

3 Section 11. CLERK OF THE SUPREME COURT. The chief
4 justice shall appoint a clerk of the supreme court who
5 shall hold office at the pleasure of the supreme court.

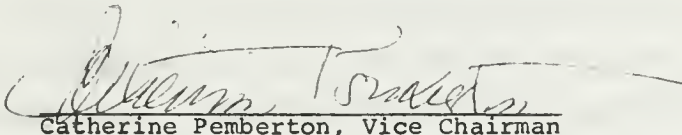
6 The salary and qualifications shall be fixed by law,
7 and the duties of the office shall be prescribed by the
8 supreme court.

9 Section 12. CLERK OF THE DISTRICT COURT. There
10 shall be a clerk of each judicial district court in each
11 county who shall be elected by the voters therein and
12 who may appoint such deputies as provided by law.

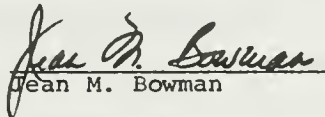
13 The term of office, qualifications, and the compensa-
14 tion of the district court clerk and deputies shall be
15 provided by law.

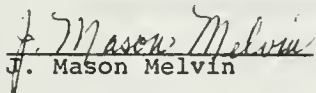
16 The duties of the clerk and deputies shall be pre-
17 scribed by the district court judge and as provided by law.

18 Section 13. DISTRICT ATTORNEYS. There shall be
19 elected district attorneys whose jurisdictional area,
20 qualifications, term of office, salaries and duties shall
21 be provided by law.

22
23
24
25 
Catherine Pemberton, Vice Chairman

26
27 
Ben E. Berg, Jr.

28 
Jean M. Bowman

29 
J. Mason Melvin
30

1 COMMENTS ON MINORITY PROPOSAL

2 This minority proposed Judicial Article is truly a
3 viable cornerstone for the establishment and operation of
4 the courts of Montana. Its elasticity and flexibility are
5 its strength; its clarity lends it force. Every delegate
6 in this convention was requested by some of the electorate
7 to assure brevity and simplicity in any constitutional
8 revisions so that all could understand. The minority pro-
9 posed Judicial Article measures up in these areas. Yet,
10 none of the time-honored safeguards have been abandoned.
11 Rather, in this proposal, citizens' choices and options have
12 been enhanced, the Judiciary has been strengthened, and the
13 entire Judicial system has been made more flexible to
14 change and review by the people.

15 The Judiciary Committee has heard many witnesses.
16 Some of the witnesses emphasized the importance of the
17 independence of the Judiciary from the Legislative and
18 Executive branches; others emphasized the importance of the
19 judges being responsive to the law. It is submitted that
20 the Judiciary must also be responsive to the lawgivers, the
21 people.

22 This article was drawn with the idea that the Judicial
23 branch must be as strong as the other two; that its officers
24 be as free from obligation as humanly possible; and, that
25 the choice of judicial officers be the responsibility of
26 the Legislative and Executive branches and the voters.

27 *Section 1. JUDICIAL POWER. The judicial power of*
28 *the state is vested in a supreme court and district courts*
29 *and such other courts as may be provided by law.*

30 COMMENTS

1 The minority committee believes that this provision
2 is broad and flexible enough to accommodate not only the
3 existing inferior courts, including justice of the peace,
4 police and municipal courts, but also for the implementa-
5 tion of future courts.

6 The minority has deleted reference to a court of
7 impeachment in the judicial article because it is an
8 archaic, seldom used procedure and because it is adequately
9 covered by Article V, Section 16 of the legislative article
10 of the 1889 constitution where it more appropriately
11 belongs.

12 It should be pointed out that by deleting reference to
13 justice of the peace, there is no intention to abolish or
14 affect the present jurisdiction and operation of these
15 courts, but rather to leave assignment of judicial power
16 in these courts exclusively to the legislature where there
17 is wide latitude for improvement and alterations that will
18 adjust to the varying complexities of rural and urban problems
19 in the administration of justice on the lower level.

20 *Section 2. SUPREME COURT POWERS. The supreme court*
21 *shall have final appellate jurisdiction and general super-*
22 *visory and administrative control over all courts.*

23 *The supreme court may make rules for the practice of*
24 *law and judicial administration in all courts.*

25 *The supreme court shall have such power to make rules*
26 *of procedure as may be provided by law.*

27 *The supreme court shall have original jurisdiction to*
28 *issue, hear and determine all writs appropriate to the*
29 *exercise of its jurisdiction, including the writ of habeas*
30 *corpus.*

COMMENTS

Final appellate jurisdiction is, by this section, vested exclusively in the supreme court. We employ the word "final" not only to indicate the place where litigation ends, but also to allow for intermediate appellate courts which may in the future become necessary to a speedy dispatch of justice. Like the federal constitution, the minority has not restricted or encumbered the appellate jurisdiction of the supreme court to "such limitations and regulations as may be provided by law". This change we believe to be consistent with the basic constitutional principle of separation of powers among the three principal departments of government. Similarly, the minority has eliminated the antique phrase "all cases in law and equity", believing this language to be archaic and a totally unnecessary distinction and restriction.

In addition to the unfettered appellate jurisdiction, the supreme court is given original jurisdiction to issue all writs and orders appropriate to the exercise of its powers. The minority proposal specifies only the writ of habeas corpus, but by this specification does not intend to exclude the use of other original writs enumerated in the 1889 constitution. Likewise, we have removed the procedural provisions regarding the issuance and hearing of writs of habeas corpus because we think these provisions are purely statutory in character and because Article III, Section 21 of the 1889 constitution adequately protects against the suspension of the privilege of a writ of habeas corpus.

To the general supervisory control which the 1889 constitution granted the supreme court, the minority has

1 added administrative control. This addition was made to
2 clarify the supervisory powers of the supreme court and to
3 permit the supreme court to exercise centralized administra-
4 tive direction for the entire judicial system. This power
5 is further emphasized by the rule-making power in judicial
6 administration. The minority does not believe that there
7 is an immediate need for the employment of this power, but
8 we see its probable need in the future. We conceive that the
9 office of the clerk of the supreme court could be used by the
10 supreme court as an agency to facilitate the administration
11 of the judicial system and have therefore included the power
12 in the supreme court to prescribe the duties of *its* clerk.
13 (Section 11).

14 Rule-making power is categorized by the minority report
15 into two classes. One class includes the practice of law
16 and judicial administration of courts, which relate exclu-
17 sively to the internal affairs of the judicial system.
18 Powers in this regard are specifically lodged in the
19 supreme court. The second class of rule-making power is
20 restricted to rules of procedure and is intended to include
21 both civil and criminal codes, but is specifically limited
22 and qualified by the phrase "as provided by law" meaning,
23 of course, that the rule-making power is actually reserved
24 to the plenary power of the legislature as the lawmaking
25 body of the State. It is believed that the making of rules
26 of evidence properly belongs exclusively with the legislature
27 because of the fine line between substantive and adjective
28 law.

29 *Section 3. SUPREME COURT ORGANIZATION. The supreme*
30 *court shall consist of one chief justice and four justices,*

1 a majority of whom will be necessary to pronounce the
2 decision, which must be in writing and signed by the majority.

3 The legislative assembly may increase the number of
4 justices from five to seven.

5 District judges shall be substituted for the chief
6 justice or the justices in the event of disqualification
7 or disability, in any cause, and the opinion of the district
8 judge sitting with the supreme court shall have the same
9 effect as an opinion of a justice of the supreme court.

10 COMMENTS

11 Except for the requirement that decisions of the
12 supreme court must be in writing and be signed by the
13 majority, which is included for the purpose of prohibiting
14 per curiam unsigned decisions, the foregoing Section 3 is
15 a condensed version of Article VIII, Section 5 of the 1889
16 constitution. It does, however, permit the enlargement of
17 the supreme court from five to seven justices including the
18 chief justice. It makes no reference to quorums, calendars
19 and procedure for adjournment of the court because the
20 minority believes that these are provisions properly covered
21 by the rules of court. Similarly, in a shorter paragraph
22 we have provided for the seating of a district judge in the
23 event of a disqualification of a supreme court justice.

24 Section 4. DISTRICT COURT POWERS. Original juris-
25 diction of all matters and causes, both civil and criminal,
26 including the power to issue, hear and determine original
27 and remedial writs is vested in the district courts, but
28 distribution of concurrent jurisdiction with other courts
29 may be provided by law.

30 Until otherwise provided by law, appeals from inferior

1 courts must be tried anew in the district court. District
2 courts shall also have jurisdiction to review decisions of
3 administrative boards and commissions and they shall have
4 such additional jurisdiction as may be delegated by the laws
5 of the United States and the state of Montana. The supreme
6 court and district court process shall extend to all parts
7 of the state.

8 COMMENTS

9 Brevity and clarity of expression have guided the
10 minority in the drafting of this proposed judicial article.
11 Our research has included a reasonably thorough study of
12 other state constitutions. We were chagrined to find no
13 other state constitution encumbered by the deliniation
14 of various types of action included within the original
15 jurisdiction of our principal trial courts as it is
16 described in Article VIII, Section 11 of the 1889 constitu-
17 tion. Moreover, we are apprehensive as to just how limited
18 that jurisdiction may prove to be if the interpretive rule
19 of expressio unis exclusio alternius (expression of one is
20 the exclusion of others) is applied.

21 With these considerations in mind, the minority sought
22 to provide district courts with broad and flexible jurisdic-
23 tion, and, accordingly, substituted the language "all
24 matters and causes" in lieu of the specifications contained
25 in the old Section 11 of Article VIII. We considered the
26 phrase "all justiciable causes" employed in the Illinois
27 constitution and used in the North Dakota proposed judicial
28 article, but from our research it appeared that the word
29 "justiciable" is too vague to be meaningful and is therefore
30 still open to a possible restrictive construction which we

1 seek to avoid. Accordingly, we preferred the unlimited words
2 "all causes" used in the California judicial article pertain-
3 ing to the superior courts, their courts of general trial
4 jurisdiction. To this phrase we added the word "matters"
5 to assure continued probate jurisdiction. To secure the
6 vestment of the power in criminal proceedings we also added
7 the phrase "both civil and criminal". To provide flexibility
8 to the entire judicial system, we added the clause "but
9 distribution of concurrent jurisdiction to other courts may
10 be provided by law". By this clause it is intended to
11 permit the legislature to assign concurrent jurisdiction to
12 hear criminal matters not amounting to a felony and minor
13 civil actions to inferior courts of limited jurisdiction.

14 By thus circumscribing original jurisdiction of the
15 judicial power with legislative discretion, we were concerned
16 that the legislature might effectively dessimate our district
17 courts by vesting more and more judicial power in tribunals
18 of its creation. To prevent this destructive abuse of
19 power we have intentionally inserted the word "concurrent"
20 as a limitation on that power, thereby forever leaving to
21 the people the choice of appearing in any matter before
22 either a constitutional or legislative court. Further, by
23 the use of the word "concurrent" as applied to original
24 jurisdiction, we intend to leave to the legislature the
25 option of unifying the trial court levels if in the future
26 that should appear desirable.

27 But we were not content to limit the district courts
28 to original jurisdiction only, but foresaw the need for
29 continued appellate jurisdiction over inferior courts and
30 administrative boards and commissions. Hence, we specifically

1 provide for trial de novo on appeal from inferior courts,
2 thereby avoiding excessive cost to parties in the prepara-
3 tion of transcript upon appeal from the lower courts.

4 We have also accomodated future delegation of
5 judicial power by the United States government or the state
6 of Montana and have not limited it to the present power of
7 naturalization as does Article VIII, Section 11 of the
8 1889 constitution.

9 Finally, to make certain that both the supreme court
10 and district courts are truly courts of statewide juris-
11 diction, we have expressly declared that their processes
12 extend to all parts of the state.

13 *Section 5. JUDICIAL DISTRICTS. The legislative*
14 *assembly shall divide the state into judicial districts and*
15 *provide for the number of judges in each district.*

16 *The legislative assembly shall have the power to*
17 *change the number of judicial districts and their boundaries*
18 *and the number of judges and magistrates in each district;*
19 *however, each district shall be formed of compact territory*
20 *and be bounded by county lines, but no changes in the*
21 *number or boundaries of districts shall work a removal*
22 *of any judge from office during the term for which he has*
23 *been elected or appointed.*

24 *The chief justice may assign the district judge and*
25 *other judges for temporary service from one district to*
26 *another, and from one county to another.*

27 COMMENTS

28 The minority believes that it is the prerogative of
29 the legislature to divide the state into judicial districts
30 because of the political characteristics of such disticts.

1 It is felt that the legislature is not only better equipped
2 to maintain a district's political integrity, but it is
3 altogether inappropriate for a court to become involved in
4 political activity of any character. It is presumed, however,
5 that the legislature will consult with the supreme court when
6 providing for the number of judges in each district. Our
7 position also prevents capricious action on the part of the
8 legislature which might cause a judge to be removed from
9 office. It is also doubtful, under this system of
10 legislative deliberation, that a judge could be moved to
11 a district or removed from his district because of an unpopu-
12 lar decision.

13 *Section 6. TERMS AND PAY OF JUDGES. Justices of the*
14 *supreme court, district court judges and other judges shall*
15 *be paid as provided by law, but their salary shall not be*
16 *diminished during their term of office.*

17 *Terms of office for supreme court judges shall be four*
18 *years.*

19 *Terms of office for other judges shall be provided by*
20 *law.*

21 COMMENTS

22 By separate paragraphs, somewhat diminished in length,
23 Sections 6, 12, 20, and 30 of Article VIII of the 1889
24 constitution have been incorporated under the dual subject
25 matter of Section 7.

26 *Section 7. SELECTION OF JUDGES. In all vacancies in*
27 *the offices of supreme court justices and district court*
28 *judges caused by death, resignation, removal, retirement or*
29 *failure of an incumbent judge to file a declaration of*
30 *candidacy for a succeeding term of office, the governor of*

1 the state shall nominate a supreme court or district court
2 judge from nominees selected in the manner provided by law.
3 If the governor fails to nominate within thirty days after
4 receipt of the names of the nominees, the chief justice or
5 acting chief justice shall make the nomination. Each
6 nomination shall be confirmed by the senate, but a
7 nomination made while the senate is not assembled shall be
8 effective as an appointment until the end of the next session
9 of the senate. If the nomination is not confirmed by the
10 senate the office shall be vacant and another selection and
11 nomination shall be made.

12 Before the close of filings for nominations in the
13 first primary election after senate confirmation, the
14 name of the appointed judge shall be placed on a contested
15 non-partisan ballot if other candidates have filed for
16 election to that office. If there is no primary election
17 contest for the office, the name of the appointed judge
18 shall nevertheless be placed on a ballot in the general
19 election allowing voters of the state or district the
20 choice of his approval or rejection. Thereafter, the elected
21 judge shall be subject to approval or rejection in a
22 general election for each succeeding term of office. In
23 the event of rejection of a judge another selection and
24 nomination shall be made in like manner.

25 COMMENTS

26 Throughout the judicial and political history of the
27 United States there has always been and continues to be a
28 great and important philosophical controversy between the
29 concept of an independent judiciary and popular control
30 of the courts. This controversy is manifested by the

1 variety of systems adopted by the various states ranging
2 from lifetime appointment to the partisan election of judges.
3 In our judicial committee the concepts polarized between
4 the appointive merit system and the non-partisan election of
5 judges. After prolonged discussion and vigorous arguments
6 by strong advocates, the committee divided nearly equally
7 with the chairman voting with the majority to make a 5-4
8 split. As indicated, the committee's collective thought
9 crystallized on the selection of judges.

10 The minority proposed Section 6 as an innovation to
11 and a compromise with the existing methods of selection of
12 judges. Yet, it does, we believe, include many of the best
13 features of all plans. Thus, in synopsis, the minority plan
14 incorporates non-partisan merit selection, gubernatorial
15 nomination, senate confirmation, initial contested elections,
16 and subsequent voter choice of approval or rejection of
17 judges.

18 The purpose of the minority's plan is twofold; namely,
19 to present to the voters judicial candidates whose qualifi-
20 cations are recognized and to encourage better qualified and
21 experienced lawyers to seek elevation to the judicial bench.
22 It is the position of the minority that this system of
23 selection will provide strong, able, impartial and independent
24 judges who are still responsive to and elected by the people.

25 It is the minority's belief that today, few, if any, of
26 the voters are at all acquainted with the judicial candidates
27 and are totally uninformed of their education, background,
28 experience and individual qualifications for a judgeship.
29 We firmly believe that the survival of democratic
30 institutions and representative government is directly

1 dependent upon an informed electorate, and we think the
2 present system of elected judiciary utterly and complete-
3 ly fails to attain that desired goal. We believe this is
4 especially critical in the selection of judges who must be
5 unselfishly devoted to the fair settlement of society's
6 disputes. Their qualifications to perform this essential
7 governmental function is the first and highest consideration.

8 To better insure the selection of qualified judges,
9 the minority suggests that the legislature create a committee,
10 bi-partisan in character, composed of both lawyers and
11 laymen, but predominately laymen, who are geographically
12 distributed throughout the state with at least one member
13 from each judicial district. Preferably the committee should
14 be elected by the legislature for staggered terms of three
15 years so that one-third of its members are elected each
16 annual session of the legislature. Members of the committee
17 should not hold either public or political party offices
18 and no member during his term of office may be a candidate
19 for a judicial office.

20 The minority has purposely refrained from attempting
21 to provide for the organization of the nominating committee
22 in the belief that the legislature is better able to vigi-
23 lantly oversee its operation.

24 The minority is not satisfied with the current process
25 of unlimited gubernatorial appointive power of judges. In
26 the light of statistics revealing that an overwhelming
27 majority of our judiciary have been appointed by the governor,
28 we are especially apprehensive of the future political
29 character of our judges. Therefore, we have limited the
30 governor's nomination to those nominees selected by a

1 committee, created by and dependent upon the legislature.
2 This system, we believe, accords an effective check and
3 balance.

4 Neither have we been content with the merit selection
5 system alone, but noting the validity of recent congressional
6 disapproval of presidential appointments to the United
7 States supreme court, we have recognized the value of
8 "advice and consent" feature of the United States constitu-
9 tion and have incorporated it into our proposal by the
10 requirement of senate confirmation.

11 The fourth distinct and important feature of the
12 minority plan in the selection of judges, is, of course, a
13 necessity to a democratic form of government, i.e., a
14 competitive election of public officials. This prime
15 essential is provided for at the first primary election
16 following appointment. In this primary election any lawyer
17 may file against the appointed judge and the two candidates
18 receiving the highest vote will again compete against each
19 other in the following general election. If no candidate
20 files against the appointed judge in the primary election,
21 nevertheless, the name of the appointed judge must appear
22 on the general election ballot for acceptance or rejection
23 by the voters. For every succeeding term the elected judge
24 must submit to acceptance or rejection by the voters of his
25 district or state.

26 To repeat, the minority recommends that this compre-
27 hensive system of selection, nomination, confirmation and
28 election of judges is a realistic and practical method of
29 obtaining and keeping better judges by an informed electorate.

30 *Section 8. QUALIFICATIONS AND LIMITATIONS OF JUDGES.*

1 disqualification procedure for lower courts is provided for
2 in the statutes, the supreme court has remained exempt. By
3 this provision, the supreme court justices will also be
4 subject to the similar requirements.

5 *Section 10. REMOVAL AND DISCIPLINE OF JUDGES AND*
6 *LAWYERS. There is created a Judicial Standards Commission*
7 *consisting of three judges, selected by the district judges,*
8 *of which not more than one can be a member of the supreme*
9 *court; two members of the Montana Bar, and two citizens*
10 *who do not hold any public office of the state of Montana*
11 *or any office of a political party, appointed by the governor.*
12 *Each vacancy on the Commission shall be filled in the same*
13 *manner as the original appointment was made and the*
14 *appointee shall serve for the remainder of the term vacated.*
15 *No act of the Commission is valid unless concurred in by a*
16 *majority of its members. The Commission shall select one of*
17 *its members to serve as chairman. Its proceedings shall be*
18 *confidential.*

19 *The Commission shall have the power to investigate,*
20 *including power to subpoena witnesses and documents, upon*
21 *complaint by any citizen or on its own motion, charges*
22 *which could be the basis for retirement, censure or removal*
23 *of any justice or judge or for the discipline, censure,*
24 *suspension or disbarment of any practicing lawyer in the*
25 *state of Montana. Upon finding charges to be well founded*
26 *the Commission shall file a formal complaint before the*
27 *supreme court. The supreme court shall hear such complaint,*
28 *and if it be substantiated may retire, censure or remove*
29 *any justice or judge or discipline, censure, suspend or*
30 *disbar any practicing lawyer. If the complaint be against*

1 *a justice, the court shall call in a district judge as*
2 *provided in Section 3 of this Article.*

3 COMMENTS

4 It may seem contradictory to go into such detail in
5 this section, but the minority feels that the seeming
6 current distrust of the legal profession in general and the
7 courts in particular warranted this detail, in an effort to
8 allay this distrust and to give adequate avenue for redress
9 by the public. In cases where censure or removal of a
10 justice or judge is indicated, such action can be taken
11 without the trauma caused by a public proceeding. At the
12 same time it makes possible disciplinary action for reasons
13 that are not of such magnitude as to warrant an impeachment
14 proceeding.

15 In addition the minority feels that it is essential
16 that the public be given the opportunity for redress of
17 grievances against any practicing attorney. We feel that
18 this section will do much to keep the legal profession at
19 the high caliber that it must maintain if it is to be
20 accorded the respect necessary to have the judicial system
21 which we think Montana ought to have.

22 *Section 11. CLERK OF THE SUPREME COURT. The chief*
23 *justice shall appoint a clerk of the supreme court who shall*
24 *hold office at the pleasure of the supreme court.*

25 *The salary and qualifications shall be fixed by law,*
26 *and the duties of the office shall be prescribed by the supreme*
27 *court.*

28 COMMENTS

29 The functions of this office are administrative in
30 nature and affect no policy change or formation. For this

1 reason the minority feels it is best to allow the supreme
2 court to hire its own clerk. The clerk must work with the
3 court, and even though he or she has dealings with the public,
4 the clerk doesn't represent the people in the sense that a
5 legislator does. We feel that a substantial portion of the
6 voters don't know the candidate or candidates for the posi-
7 tion and probably aren't very concerned with the position
8 since no policy decisions are made.

9 In addition, again allowing for future innovation, if
10 the position develops into an agency to facilitate
11 administration of the judicial system, the court should
12 have the prerogative to hire the person it feels is best
13 qualified to perform the functions that it may prescribe.

14 *Section 12. CLERK OF THE DISTRICT COURT. There shall*
15 *be a clerk of each judicial district court in each county*
16 *who shall be elected by the voters therein and who may appoint*
17 *such deputies as provided by law.*

18 *The term of office, qualifications, and the compensa-*
19 *tion of the district court clerk and deputies shall be*
20 *provided by law.*

21 *The duties of the clerk and deputies shall be prescribed*
22 *by the district court judge as provided by law.*

23 COMMENTS

24 This section is basically the same as Article VIII,
25 Section 18 in the 1889 constitution, except that we have
26 delegated to the legislature the duty of providing term of
27 office, qualifications and compensation. Again, this merely
28 allows flexibility.

29 It is felt that the clerk should have the privilege of
30 appointing deputies, who in effect are working for him.

The minority also feels that the duties of the clerks and deputies should be provided not only by the legislature but also by the district court judge who will be working closely with the clerk.

By including the clerk of the court in this judicial article it is not intended to impair the consolidation of this office with other county offices as proposed by the Local Government Committee, but if the Committee on Style and Drafting determines there is conflict, the matter may be referred back to a joint conference of Judiciary and Local Government Committees.

Section 13. DISTRICT ATTORNEYS. There shall be elected district attorneys whose jurisdictional area, qualifications, term of office, salaries and duties shall be provided by law.

COMMENTS

In an effort to write a document that will be applicable for many years, we deemed it best to change the title of county attorney to district attorney. It is entirely possible that eventually counties may decide to share services and a constitutional designation of a county attorney for each county would make transition in this area difficult. We have provided for legislative action concerning jurisdictional area, qualifications, term of office, salary and duties in keeping with our philosophy of flexibility. This section in no way precludes continuing the system of county attorneys that we now have; they will merely be called district attorneys instead.

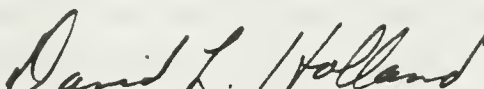
UNANIMOUS PROPOSAL ON SEPARATE MATTER

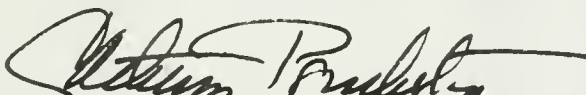
BE IT PROPOSED BY THE JUDICIARY COMMITTEE:

That there be two sections in the new constitution to read as follows:


Section ____ . EXEMPTION LAWS. The legislative assembly shall enact liberal homestead and exemption laws.

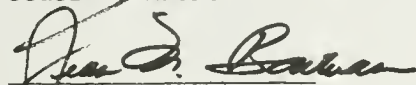
Section ____ . PERPETUITIES. No perpetuities shall be allowed, except for charitable purposes.

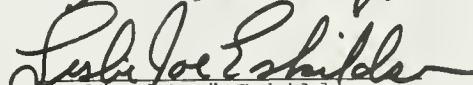

David L. Holland, Chairman



Catherine Pemberton, Vice Chairman


Cedor B. Aronow


Ben L. Berg, Jr.


Jean M. Bowman


Leslie Joe Eskildsen


Rod Hanson


J. Mason Melvin


John M. Schiltz

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30

COMMENTS ON UNANIMOUS PROPOSAL ON SEPARATE MATTER

Section _____. EXEMPTION LAWS. The legislative assembly shall enact liberal homestead and exemption laws.

COMMENTS

This language is identical with Article XIX, Section 4 of the 1889 constitution. All of the committee feel that no change shall be made in this constitutional section.

Section _____. PERPETUITIES. No perpetuities shall be allowed, except for charitable purposes.

COMMENTS

This language is identical with Article XIX, Section 5 of the 1889 constitution. All of the committee feel that no change shall be made in this constitutional section.

APPENDIX A

CROSS REFERENCES

I. MAJORITY PROPOSAL:

Proposed Section	Present Article & Section
1	VIII, 1
2	VIII, 2
3	VIII, 3
4	VIII, 4
5	VIII, 5
6	VIII, 6, 7
7	VIII, 9
8	VIII, 10
9	VIII, 11
10	VIII, 12, 13
11	VIII, 15
12	VIII, 16
13	VIII, 17
14	VIII, 18
15	VIII, 19
16	VIII, 20, 21
17	VIII, 22, 23
18	VIII, 24
19	New Section
20	VIII, 25
21	VIII, 26
22	VIII, 27
23	VIII, 28
24	VIII, 29
25	VIII, 30
26	VIII, 31
27	VIII, 32
28	VIII, 33
29	VIII, 34
30	VIII, 35
31	VIII, 36
32	VIII, 37

Sections Deleted:
VIII, 8, 13

II. MAJORITY PROPOSAL (CAMPAIGN EXPENSES)

No cross reference

III. MINORITY PROPOSAL

Proposed Section

Present Article & Section

1	VIII, 1
2	VIII, 2, 3
3	VIII, 5
4	VIII, 11, 23
5	VIII, 12, 14
6	VIII, 7, 12, 20, 29
7	VIII, 6, 12, 34
8	VIII, 10, 16, 30, 31, 33, 35
9	New Section
10	New Section
11	VIII, 9
12	VIII, 18
13	VIII, 19

Sections Deleted: VIII, 4,
8, 13, 15, 17, 21,
22, 24, 25, 26, 27,
28, 32, 36, 37

IV. UNANIMOUS PROPOSAL ON SEPARATE MATTER

Proposed Section

Present Article & Section

Exemption Laws	XIX, 4
Perpetuities	XIX, 5

APPENDIX B

PROPOSALS CONSIDERED BY COMMITTEE

The following delegate proposals were examined and considered by the Judiciary Committee during its deliberations:

	<u>Number of Proposal</u>	<u>Chief Sponsor</u>	<u>Subject Matter</u>	<u>Disposition</u>
1.	7	Earl Berthelson	Judicial Article	Adopted in Part by Majority and Minority
2.	30	Jerome J. Cate	Soverign Immunity	Referred to Bill of Rights
3.	34	Bob Campbell	Restoration of Rights	Referred to Bill of Rights
4.	38	Donald R. Foster	Citizen Participation in Government	Referred to Bill of Rights
5.	44	Jerome T. Loendorf	Judicial Article	Rejected
6.	53	Thomas M. Ask	Justices of Peace	Rejected
7.	69	Carl M. Davis	Prosecuting Attorneys	Rejected
8.	90	Geoffrey L. Brazier	Disqualifica- tion of Judges	Rejected
9.	92	Franklin Arness	Appeals and Inferior Courts	Rejected

	<u>Number of proposal</u>	<u>Chief Sponsor</u>	<u>Subject Matter</u>	<u>Disposition</u>
10.	137	Mike McKeon	Probate Court	Rejected
11.	145	Jerome T. Loendorf	Employees' Retirement System	Rejected
12.	149	Mike McKeon	Probate Court	Rejected
13.	155	Archie Wilson	Probate Administrator	Rejected
14.	159	Robert Lee Kelleher	Acts of Parliament	Rejected
15.	163	Veronica Sullivan	Fair and humane facilities	Suggested to send to Bill of Rights
16.	168	Robert Lee Kelleher	Rights of Convicted Felons	Rejected
17.	169	Robert Lee Kelleher	Access to Courts	Rejected
18.	174	Otto T. Habedank	Limitation on Due Process	Rejected
19.	176	Robert Lee Kelleher	Failure to Vote is Crime	Rejected

APPENDIX C

WITNESSES HEARD BY THE COMMITTEE

NAME - AFFILIATION - RESIDENCE- SUBJECT

1. Professor David Mason - Montana School of Law - Missoula -
Proponent of the Montana Plan
2. Dean Robert E. Sullivan - Montana School of Law - Missoula -
Proponent of the Montana Plan
3. Professor William "Duke" Crowley - Montana School of Law-
Missoula - Proponent of the Montana Plan
4. Kenneth Davis - Montana Citizens for Court Improvement -
Billings - Proponent of the Montana Plan
5. Stanley Lowe - Associate Director, American Judicature Society -
Chicago - Proponent of the Montana Plan
6. William Bellingham - President, Montana Bar Association -
Billings - Proponent of the Montana Plan
7. Earl Berthelson - Convention Delegate - Conrad - Proponent
of the Montana Plan
8. Geoffrey Brazier - Convention Delegate - Helena - Courts in
General; Delegate Proposal #90.
9. George Schotte - President, Montana Citizens for Court
Improvement- Helena - Proponent of the Montana Plan
10. John Lane - Cascade County Interlocal Cooperation Committee
representative - Helena - favored Montana Plan, appointment
of judges and flexibility of lower courts.
11. Chief Justice J. T. Harrison - Supreme Court of Montana -
Helena - endorsed Montana Plan
12. Judge Robert Keller - Montana District Court - Kalispell
Appointment of judges; increased judicial compensation and
other court problems.
13. Archie Wilson - Convention Delegate - Hysham - favored
most parts of Montana Plan; Delegate Proposal #155.

14. Charles McNeil - Convention Delegate - Polson - Opponent of Montana Plan
15. Judge Victor Fall (retired) - Montana District Court - Helena - Endorsed a short judicial article with as much left to the legislature as possible.
16. Judge Paul Hatfield - President, Montana Judges' Association - Great Falls - Favored Judges' Plan of the Judicial article.
17. Claude Erickson - Montana Citizens for Court Improvement - Livingston - Proponent of Montana Plan.
18. Charles Moses - Attorney - Billings - Submitted short, flexible judicial article.
19. Conrad Fredricks - County Attorney - Big Timber - County Attorneys.
20. Judge E. Gardner Brownlee - Montana District Court - Missoula - Justices of the Peace; Opponent of Montana Plan
21. James Oleson - President, Montana County Attorneys Association - Kalispell - County Attorneys.
22. Bob Brooks - County Attorney - Broadus - County Attorneys.
23. Andrew G. Sutton - Secretary, Montana County Attorneys Association - Jordan - County Attorneys.
Ass
24. Opal Eggert - Lobbyist, Elected County Officials of Montana- Justices of the Peace, Clerks of Court.
25. Sterling DePratu - Justice of the Peace - Fairfield - Justices of the Peace.
26. Ken D. Clark - Lobbyist, United Transportation Unions - Mile City - Justices of the Peace, Clerks of Court.
27. Walter Hammermeister - Sheriff and Peace Officer Association - Conrad - Justices of the Peace.
28. Thomas J. Kearney - Clerk of Montana Supreme Court - Helena - Clerks of Court.
29. Roger Barnaby - President, Montana Clerks of Court Association - Wibaux - Clerks of Court.
30. Elmer Erickson - Clerk of District Court - Chouteau - Clerks of Court.

31. Hardin E. Todd - Secretary, Montana Clerks of Court Association - Billings - Clerks of Court.
32. Francis Mitchell - Lobbyist, Montana Common Cause - Helena - Opponent of Montana; favored partisan election of supreme court justices and left the design of the court system to the supreme court.
33. J. Chan Ettien - Attorney - Havre - Opponent of the Montana Plan.
34. Joe Roberts - Law Student - Missoula - Justices of the Peace
35. John Mudd - Law Student - Missoula - Judicial Selection.
36. Judge Russell Smith - Montana Federal District Court - Missoula - Proponent of Montana Plan.
37. Barney Reagan - Ninth Judicial District Bar Association - Helena - Opponent of Montana Plan.
38. Harold McChesney - President, Montana Trial Lawyers Association - Missoula - Reported poll of his organization showing opposition to appointive judges and in favor of deleting constitutional reference to J. P. Courts.
39. John Hauf - Attorney - Billings - Judicial Selection.
40. Mrs. Bernice Wolf - Interested Citizen - Nashua - Courts in general.
41. Roy Crosby - Montana Citizens for Constitutional Government - Missoula - Opponent of Montana Plan and Delegate Proposal #44.
42. Judge W. W. Lessley - Montana District Court - Bozeman - Proponent of Montana Plan.
43. Judge Robert Wilson - Montana District Court - Billings - Proponent of Montana Plan.
44. Paul Keller - Attorney - Helena - Justice of the Peace Courts.
45. Luke McKeon - State Senator - Anaconda - Opponent of Montana Plan.
46. Joe Renders - Interested Citizen - Great Falls - Opponent of Montana Plan.

47. James T. Mular - Brotherhood of Railway and Airlines Clerks -Butte - Opponent of Montana Plan.
48. John Sullivan - Law Student - Missoula - Opponent of Montana Plan
49. Frank Arness - Convention Delegate - Libby - Delegate Proposal #92
50. A. W. Kamhoot - Convention Delegate - Forsyth - Delegate Proposal #155.
51. Henry Siderius - Convention Delegate - Kalispell - Delegate Proposal #155.
52. Tom Schneider - Executive Director, Montana Public Employees Association - Helena - Delegate Proposal #145.
53. Otto Habedank - Convention Delegate - Sidney - Delegate Proposal #174.
54. Jerome Loendorf - Convention Delegate - Helena - Delegate Proposals #44, 155
55. Carl Davis - Convention Delegate - Dillon - Delegate Proposal #69.
56. Tom Ask - Convention Delegate - Dillon - Delegate Proposal #53, 69.
57. Robert Kelleher - Convention Delegate - Billings - Judicial Selection.
58. Daphne Bugbee - Convention Delegate - Missoula - Judicial Selection.
59. Miles Romney - Convention Delegate - Hamilton - Judicial Compensation.
60. Ray Gulick - Interested Citizen - Joplin - Courts in General.
61. Robert Brooks, President, Montana Magistrates Association - Lewistown - Justice of the Peace Courts.

-75-

ROLL CALLS ON MAJORITY PROPOSAL

-76-

—

APPENDIX D

ROLL CALLS ON MAJORITY PROPOSAL ON CAMPAIGN EXPENSES

- 78 -

ROLL CALLS ON MINORITY PROPOSAL

[illegible]

APPENDIX D

ROLL CALLS ON UNANIMOUS PROPOSAL, ON SEPARATE MATTER.

[illegible]

ROLL CALLS ON UNANIMOUS PROPOSAL

[illegible]

